

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

IN RE INTEL CORPORATION  
MICROPROCESSOR ANTITRUST  
LITIGATION

MDL Docket No. 05-MD-1717-JJF  
Civil Action No. 1:05-CV-00485-JJF

Judge Joseph J. Farnan, Jr.

THE NATIONAL PLAINTIFFS GROUP'S REPLY  
MEMORANDUM IN FURTHER SUPPORT OF  
THEIR MOTION FOR CONSOLIDATION AND APPOINTMENT  
OF INTERIM CLASS COUNSEL AND LIAISON COUNSEL

The plaintiffs comprising the National Plaintiffs Group,<sup>1</sup> by their counsel, respectfully submit this reply in further support of their motion pursuant to F.R.C.P. Rule 23 (g) for consolidation and appointment of Interim Class Counsel and liaison counsel in the class action lawsuits against Intel Corporation that have been transferred to and coordinated before this Court by the November 8, 2005 Order of the Judicial Panel on Multidistrict Litigation.

In their reply papers, while not formally opposing the National Plaintiffs Group's Rule 23(g) motion, the San Francisco Group continues to urge the Court to adopt its proposed bloated leadership structure for this litigation, including a four-firm leadership group and several undisclosed additional layers of counsel. Significantly, there appears to be no decision in this Circuit supporting the appointment of such an overpopulated leadership group when such appointment is, as here, contested. The San Francisco Group has failed to cite any authority in support of their position. Indeed, the law in this Circuit appears to be to the contrary. Here, the courts strongly favor the appointment of a single, experienced lead counsel who possesses the

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<sup>1</sup> Information regarding the more than 30 plaintiffs comprising the National Plaintiffs Group, together with the captions of the actions they filed in this Court, is set forth in Footnote One of the National Plaintiff Group's *Memorandum Of Law in Support of its Motion for Appointment of Interim Class Counsel and Liaison Counsel and in Opposition to the San Francisco Group's Motion for Consolidation and Appointment of Co-Lead Counsel and Liaison Counsel*, filed in this Court on January 24, 2006 (the "Opening Memorandum" or "Opening Mem.").

resources to prosecute the action and to draw on the skills and expertise of other plaintiffs' counsel in the case on an as-needed basis. *See, e.g., In re Nice Sys., Ltd. Sec. Litig.*, 188 F.R.D. 206, 224 (D. N.J. 1999) (recognizing and endorsing the ability of a sole lead counsel "[to] distribute non-duplicative work assignments to non-lead counsel so as to facilitate the orderly and efficient prosecution of the . . . action.") (citing *In re Wells Fargo Sec. Litig.*, 156 F.R.D. 223 at 227 (N.D. Cal. 1994) (appointing a single lead counsel but stating the firm may "farm[] out work on the case to another law firm because of specialized knowledge, geographic proximity to witnesses or evidence or other comparative advantages, or even to spread risk"))).

Particularly interesting in this context is *In re Milestone Sci. Sec. Litig.*, 187 F.R.D. 165 (D. N.J. 1999). In that case, the Cohen Milstein firm – one of the firms comprising the San Francisco Group's proposed four-way leadership in this case – had its three-way leadership proposal rejected in favor of the appointment of a sole lead counsel. Indeed, in *Milestone*, the court criticized Cohen Milstein's proposed multi-firm leadership structure, stating:

Abbey, Gardy appears able to singly undertake the responsibilities of lead counsel in this action. *See* Revised Lead Counsel Order (revising the proposed duties and functions of Abbey, Gardy to fit the role of sole lead counsel). Schoengold and Cohen, Milstein, by contrast, rigidly advocate an inefficient litigation by committee approach, similar to that originally proposed by the lead plaintiff. *Compare* Pre-Trial Order No. 3 with Pre-Trial Order No. 2. Neither Schoengold nor Cohen, Milstein has demonstrated a willingness to individually assume all of the responsibilities associated with the sole lead counsel position. Consequently, in this case it appears Abbey, Gardy is a more suitable lead counsel selection.

*Id.* at 180.<sup>2</sup> The court further noted that "[i]t further appears Abbey, Gardy has sufficient resources and flexibility to effectively manage the litigation for the entire Plaintiff Class." *Id.*

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<sup>2</sup> In rejecting the Cohen Milstein structure in favor of appointing sole lead counsel, the *Milestone* court also stated:

[I]t appears the appointment of several lead counsel will not promote the efficient prosecution of this case, and is not warranted. \* \* \* ***The simple assurance that there is a benefit to be derived from the input of several law firms is not sufficient justification.***

The *Milestone* court specifically rejected the multiple-firm lead counsel proposal proffered by Cohen Milstein and other firms, stating:

Schoengold and Cohen, Milstein have not demonstrated how the possible benefits derived from appointing several lead counsel outweigh the complications and increased costs and expenses associated with the litigation by committee approach. Accordingly, there is no reason to burden the Plaintiff Class with additional counsel fees, delay or confusion which would result from the appointment of multiple counsel. Abbey, Gardy is approved as sole lead counsel for the Plaintiff Class. As noted, this decision does not prohibit Abbey, Gardy from farming out work to other firms because of expertise, proximity to witnesses or evidence or to promote efficiency or expedition.

*Id.* at 181. The court also recognized that “the approval of multiple lead counsel may engender inefficiency in class action litigation . . . [citation omitted] [and that] [t]he potential for duplicative services and the concomitant increase in attorneys’ fees works against the approval of multiple lead counsel. *Id.* (citing *Chill v. Green Tree Fin. Corp.*, 181 F.R.D. 398, 413 (D. Minn. 1998)).<sup>3</sup> The court concluded: “[s]imply stated: class actions are not to be used as a vehicle to promote attorney employment.” *Id.* at 178.

Moreover, regardless of the qualities of the law firms seeking appointment as Interim Class Counsel here, if the plaintiffs who those firms represent lack standing or are otherwise inadequate to file and prosecute their claims, then those plaintiffs’ lawyers do not satisfy the Rule 23(g) requirements for appointment as Interim Class Counsel.

This point is confirmed by the Notes of the Advisory Committee on the 2003 amendments to Fed. R. Civ. P. 23(g), which explain that the Rule 23(g) analysis of counsel is not

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*In re Milestone*, 187 F.R.D. at 178 (emphasis added). The same is true here.

<sup>3</sup> See also *Reiger v. Altris Software, Inc.*, Case No. 98cv0528J (JFS), 1998 U.S. Dist. LEXIS 14705, at \*15-16, \*18 (S.D. Cal. Sept. 14, 1998) (observing the enlargement of the number of lead counsel may “unnecessarily increase the time and expense spent on preparing and litigating the case”) (citation omitted).

separated from the adequacy of the plaintiffs they represent. *See* Notes to Rule 23(a)(4) (“Rule 23(a)(4) will continue to call for scrutiny of the proposed class representative, while this subdivision will guide the court in assessing proposed class counsel as part of the certification decision.”). Such adequacy necessarily includes an examination of those plaintiffs’ standing to litigate the claims filed by them. If the plaintiffs lack standing and are inadequate to pursue their claims, those plaintiffs’ lawyers cannot be deemed adequate to prosecute them. As set forth in the National Plaintiffs Group’s opening memorandum, the plaintiffs comprising that group are the only plaintiffs in these actions with standing to prosecute their claims. The San Francisco Group’s plaintiffs lack such standing, thereby rendering them inadequate and requiring the denial of their counsel’s interim class counsel application.

Finally, the National Plaintiffs Group generally agrees with the substance of the February 13, 2006 letter that AMD’s counsel submitted to the Court. Specifically, the National Plaintiffs Group agrees that this is a complex case that will require the marshalling of substantial resources in terms of both personnel and capital. There are many excellent law firms who have filed the class action cases comprising this coordinated action – including the 23 law firms supporting Wolf Haldenstein’s appointment as sole Interim Class Counsel, as well as many of the firms supporting the San Francisco Group’s position. We anticipate that the Court-appointed leader of these class cases will be expected to call upon the resources and skills of those well-qualified firms in prosecuting these cases, regardless of present alliances. The National Plaintiffs Group, however, has chosen to seek the appointment of a single leader and voice to lead these cases. In contrast, the San Francisco Group advances a bloated, lawyer-driven leadership structure that, by its very nature, fosters inefficiency and contravenes the general consensus of the courts in this Circuit with respect to appointing lead counsel in complex class actions.

#### **IV. CONCLUSION**

For the reasons set forth in their Opening Memorandum, their Response Memorandum, and above, the members of the National Plaintiffs Group respectfully request that the Court grant their motion and enter an Order consolidating these cases and appointing Wolf Haldenstein Adler Freeman & Herz LLP as Interim Class Counsel and Biggs and Battaglia as Liaison Counsel.

**DATED:** February 14, 2006

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I, Robert D. Goldberg, counsel of record, hereby certify that I caused a copy of the attached The National Plaintiffs Group's Reply Memorandum In Further Support Of Their Motion For Consolidation And Appointment Of Interim Class Counsel And Liaison Counsel to be served on the following individuals by electronic filing on February 14, 2006 and on the remainder of the individuals not registered for electronic filing by first class mail on February 15, 2006.

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